

Bryan A. Albue (No. 009594)  
Janet W. Lord (No. 011910)  
FENNEMORE CRAIG  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
Telephone: (602) 916-5000  
Facsimile: (602) 916-5999  
E-mail: balbue@fclaw.com

GREINER, GALLAGHER & CAVANAUGH  
Attn: Timothy R. Greiner, Esq.  
2001 Route 46, Suite 202  
Parsippany, New Jersey 07054  
Phone: 973-335-7400  
Fax: 973-335-8018

Attorneys for Plaintiffs Days Inns of America, Inc. and  
Ramada Franchise Systems, Inc.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re

LEEWARD HOTELS, L.P.,

Debtor,

DAYS INNS OF AMERICA, INC., a  
Delaware corporation, and RAMADA  
FRANCHISE SYSTEMS, INC., a  
Delaware corporation,

Plaintiffs,

v.

LEEWARD HOTELS, L.P., an Arizona  
limited partnership, and KILBURG  
HOTELS, L.L.C., an Arizona limited  
liability company,

Defendants.

Case No. 99-09162-ECF-GBN

Chapter 11

Adversary No. <sup>886</sup>~~99-885~~

**VERIFIED ADVERSARY COMPLAINT  
FOR INJUNCTIVE AND RELATED  
RELIEF**

Plaintiffs Days Inns of America, Inc. ("DIA") and Ramada Franchise Systems, Inc.  
("RFS"), for their Verified Adversary Complaint against defendants Leeward Hotels, L.P.  
and Kilburg Hotels, L.L.C. (collectively "Defendants"), say:

**PARTIES**

1. DIA is a Delaware corporation with its principal place of business in

**FILED**  
FROM OVERNIGHT BOX  
DEC 21 1999  
KEVIN E. O'BRIEN  
UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

S.I. 12/23/99 PC

1 Parsippany, New Jersey.

2 2. RFS is a Delaware corporation with its principal place of business in  
3 Parsippany, New Jersey.

4 3. Leeward Hotels, L.P., the debtor and debtor-in-possession herein, is an  
5 Arizona limited partnership ("Debtor"). Upon information and belief, Debtor's principal  
6 office is in Scottsdale, Arizona.

7 4. Kilburg Hotels, L.L.C. is an Arizona limited liability corporation ("Kilburg  
8 Hotels"). Upon information and belief, Kilburg Hotels is the general partner of Debtor  
9 and maintains its principal office in Scottsdale, Arizona, and is the operator/manager of  
10 the hotel facilities that are the subject of this adversary proceeding.

#### 11 **JURISDICTION AND VENUE**

12 5. This Court has jurisdiction of this adversary proceeding under 28 U.S.C.  
13 § 1334(b).

14 6. This adversary proceeding is a core proceeding under 28 U.S.C.  
15 § 157(b)(2)(A)(B)(G)(M) and (O).

16 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1409, in that this  
17 adversary proceeding arises under, arises in or is related to a bankruptcy case pending in  
18 this District.

#### 19 **ALLEGATIONS COMMON TO ALL COUNTS**

##### 20 **The Marks**

21 8. DIA and RFS are among the largest guest lodging facility franchise systems in  
22 the United States and are widely known as franchisors of guest lodging service franchises.

23 9. DIA and RFS have the exclusive right to sublicense the use of their various  
24 trade names and service marks (which are on the principal register of the United States  
25 Patent and Trademark Office), logos and derivations thereof (the "Days Inn Marks",  
26 "Ramada Marks" or the "Marks", as applicable), as well as the distinctive "Days Inn  
27 System" and "Ramada System", which provide hotel services to the public under the Days  
28 Inn® or Ramada® names and certain services to their licensees, including centralized

1 reservation systems, advertising, publicity and training services.

2 10. DIA and RFS or their predecessors have continuously used their Marks  
3 since the date of their registration, and the Marks are in full force and effect, unrevoked,  
4 uncanceled and incontestable pursuant to 15 U.S.C. § 1065.

5 11. DIA and RFS have given notice to the public of the registration of their  
6 Marks as provided in 15 U.S.C. § 1111.

7 12. DIA and RFS use or have used the Days Inn Marks and Ramada Marks as  
8 abbreviations of their respective brand names.

9 13. Through their respective franchise systems, DIA and RFS market, promote  
10 and provide services to their guest lodging franchisees throughout the United States. In  
11 order to identify the origin of their guest lodging services, DIA and RFS allow their  
12 franchisees to utilize the Days Inn Marks and Ramada Marks, respectively.

13 14. DIA and RFS have invested substantial effort over a long period of time,  
14 including the expenditure of millions of dollars, to develop goodwill in their trade names  
15 and service marks to cause consumers throughout the United States to recognize the Days  
16 Inn Marks and Ramada Marks as distinctly designating guest lodging services as  
17 originating with DIA and RFS.

18 15. The value of the goodwill developed in the Days Inn Marks and Ramada  
19 Marks does not admit of precise monetary calculation, but because DIA and RFS are two  
20 of the largest guest lodging facility franchise systems in the United States and are widely  
21 known as providers of guest lodging facility services, the value of DIA's goodwill and  
22 RFS' goodwill exceeds hundreds of millions of dollars.

23 16. The Days Inn Marks and Ramada Marks are indisputably among the most  
24 famous trademarks in the United States.

25 **The Hotel Facilities At Issue**

26 **Days Inn-Las Cruces, NM**

27 17. On or about March 21, 1997, DIA entered into a License Agreement with  
28 Las Cruces Inn Hotel, L.P., a Delaware limited partnership (the "Las Cruces License

1 Agreement" and "Las Cruces Licensee", respectively) for the operation of a guest lodging  
2 facility located at 2600 South Valley Drive, Las Cruces, New Mexico (the "Days Inn  
3 Facility").

4 18. Under the terms of the Las Cruces License Agreement, the Las Cruces  
5 Licensee was obligated to operate the Days Inn Facility for a fifteen-year term, during  
6 which time the Las Cruces Licensee was permitted to use the Days Inn Marks in  
7 connection with the operation and use of the Days Inn Facility as part of the DIA  
8 Franchise System.

9 19. Section 9 of the Las Cruces License Agreement provides that if the Las  
10 Cruces Licensee directly or indirectly transfers any right under the Las Cruces License  
11 Agreement or ownership of the Days Inn Facility, including, without limitation, by means  
12 of a transfer of its controlling equity ownership, without complying with the transfer  
13 requirements of Section 9, then the License granted under the Las Cruces License  
14 Agreement terminates, and DIA has the right to terminate the Las Cruces License  
15 Agreement pursuant to Sections 11.1 and 11.2 thereof.

16 20. Section 9 of the License Agreement also provides that any attempted  
17 transfer of rights under the Las Cruces License Agreement or of the Days Inn Facility  
18 without the requisite prior approval of DIA is void as between the Las Cruces Licensee  
19 and DIA.

20 21. Under Sections 11.1 and 11.2 of the Las Cruces License Agreement, an  
21 unauthorized transfer governed by Section 9 of the Las Cruces License Agreement  
22 constitutes an event of default under such Agreement, and is a ground for termination of  
23 the Las Cruces License Agreement.

24 **Ramada-Abilene, Ramada-Albuquerque and Ramada-Round Rock**

25 22. On or about March 21, 1997, RFS entered into a License Agreement with  
26 Abilene Inn Hotel, L.P., a Delaware limited partnership (the "Abilene License  
27 Agreement" and "Abilene Licensee", respectively), for the operation of a guest lodging  
28 facility located at 3450 South Clack, Abilene, Texas (the "Abilene Facility").

1       23. Under the terms of the Abilene License Agreement, the Abilene Licensee  
2 was obligated to operate the Abilene Facility for a fifteen-year term, during which time  
3 the Abilene Licensee was permitted to use the Ramada Marks in connection with the  
4 operation and use of the Abilene Facility as part of the Ramada Franchise System.

5       24. On or about December 30, 1993, RFS entered into a License Agreement  
6 with Hospitality Investment Associates (Albuquerque J.V.), a New Mexico joint venture  
7 (the "Albuquerque License Agreement" and "Albuquerque Licensee", respectively), for  
8 the operation of a guest lodging facility located at 25 Hotel Circle, NE, Albuquerque,  
9 New Mexico (the "Albuquerque Facility").

10       25. Under the terms of the Albuquerque License Agreement, the Albuquerque  
11 Licensee was obligated to operate the Albuquerque Facility for a fifteen-year term  
12 (subject to a special stipulation allowing either party to terminate after four years, which  
13 stipulation no longer is applicable), during which time the Albuquerque Licensee was  
14 permitted to use the Ramada Marks in connection with the operation and use of the  
15 Albuquerque Facility as part of the Ramada Franchise System.

16       26. On or about March 21, 1997, RFS entered into a License Agreement with  
17 Round Rock Hotel, L.P., a Delaware limited partnership (the "Round Rock License  
18 Agreement" and "Round Rock Licensee", respectively), for the operation of a guest  
19 lodging facility located at 1400 North I-35, Round Rock, Texas (the "Round Rock  
20 Facility").

21       27. Under the terms of the Round Rock License Agreement, the Round Rock  
22 Licensee was obligated to operate the Round Rock Facility for a fifteen year term, during  
23 which time the Round Rock Licensee was permitted to use the Ramada Marks in  
24 connection with the operation and use of the Round Rock Facility as part of the Ramada  
25 Franchise System.

26       28. Section 9 of both the Abilene License Agreement and the Round Rock  
27 License Agreement provides that if the Licensee directly or indirectly transfers any rights  
28 under its respective License Agreement, or transfers ownership of the licensed facility,

1 including, without limitation, by means of a transfer of its controlling equity ownership,  
2 without complying with the transfer requirements under Section 9, then the License  
3 granted under the License Agreement terminates.

4 29. Section 9 of both the Abilene License Agreement and the Round Rock  
5 License Agreement further provides that any transaction requiring RFS' consent under  
6 Section 9, in which RFS' consent is not first obtained, shall be void as between the  
7 Licensee and RFS.

8 30. Under Sections 11.1 and 11.2 of both the Abilene License Agreement and  
9 the Round Rock License Agreement, an unauthorized transfer governed by Section 9 of  
10 such Agreements constitutes an event of default under the License Agreements and is a  
11 ground for termination of such License Agreements.

12 31. Section 17 of the Albuquerque License Agreement prohibits, among other  
13 things, transfers by the Albuquerque Licensee of rights under the Albuquerque License  
14 Agreement and/or any interest in the legal or equitable title to the Albuquerque Facility,  
15 without complying with the requirements of Section 17, including having first obtained  
16 the written consent of RFS.

17 32. Section 17 of the Albuquerque License Agreement further provides that any  
18 attempted transfer or assignment which is not in accordance with Section 17 shall be void  
19 and shall give RFS the right to terminate the License granted under the License  
20 Agreement.

21 33. Under Section 19 of the Albuquerque License Agreement, an unauthorized  
22 transfer governed by Section 17 of such Agreement constitutes an event of default under  
23 such License Agreement and is a ground for termination of the Albuquerque License  
24 Agreement.

### 25 The Unauthorized Transfers

26 34. By separate but similar instruments titled "General Assignment and  
27 Transfer" (such instruments differing only in the identity of the transferor and the  
28 description of the real property referred to therein), stated to be effective March 29, 1999,

1 the Las Cruces Licensee, the Abilene Licensee, the Albuquerque Licensee, and the Round  
2 Rock Licensee agreed to convey their respective licensed hotel facilities to the Debtor,  
3 and purported to transfer and assign to the Debtor, among other things "[a]ll transferable  
4 rights, title and interest of Assignor in and to all written contracts or agreements, such as  
5 franchise ... contracts which relate to the ownership ... or operation of the Real Property  
6 or any portion thereof; ... [a]ll contract rights, ... trademarks, service marks, logos, ...  
7 technology and technical information, copyrights, ... the goodwill, ongoing business and  
8 operating systems of the Hotel, ... and other items of intangible personal property relating  
9 to the ownership or operation of the hotel and owned by Assignor."

10 35. In or about April 1999, the aforesaid Licensees of record conveyed title to  
11 their respective hotel facilities to the Debtor.

12 36. The aforesaid transfers were not authorized by DIA or RFS and were in  
13 violation of the Las Cruces License Agreement, Abilene License Agreement,  
14 Albuquerque License Agreement, and the Round Rock License Agreement (collectively,  
15 the "License Agreements").

16 37. The Debtor and/or Kilburg Hotels are operating the Days Inn Facility, the  
17 Abilene Facility, the Albuquerque Facility and the Round Rock Facility (collectively, the  
18 "Facilities"), and are using the Days Inn Marks and Ramada Marks without any authority  
19 to do so.

20 38. The Debtor and Kilburg Hotels are cognizant of the fact that neither of them  
21 has been licensed by either DIA or RFS to operate the Facilities as part of the Days Inn or  
22 Ramada Franchise Systems, and that neither of the Defendants have authority to use  
23 either the Days Inn Marks or the Ramada Marks. Such unauthorized conduct by the  
24 Debtor and Kilburg Hotels is in wanton and willful disregard of the rights of DIA and  
25 RFS.

26 39. Neither the Debtor, Kilburg Hotels nor this bankruptcy estate has any  
27 interest in or entitlement to use the Marks, and the Marks may not be used in connection  
28 with any plan that may be confirmed in this case or by any reorganized entity resulting

1 from a confirmed plan.

2 40. Such unauthorized use of the Marks by the Debtor and Kilburg Hotels  
3 constitutes misappropriation of the Marks, affirmatively misleads the public with respect  
4 to the affiliation of the Facilities with DIA and RFS, causes confusion, mistake or  
5 deception as to such affiliation, causes dilution and disparagement of the Marks,  
6 constitutes a misrepresentation to the public and false designation of the nature, quality,  
7 origin and source of the guest lodging services provided at the Facilities, constitutes the  
8 unlawful passing off of the Facilities' guest lodging services as those of DIA and RFS,  
9 thereby causing damage to the business, reputation and goodwill of DIA and RFS, and  
10 prevents DIA and RFS from controlling the nature and quality of the goods and services  
11 provided at the Facilities.

12 41. The Debtor and Kilburg Hotels have engaged in the aforesaid conduct  
13 without compensating DIA or RFS for the use of the Marks, to the further detriment and  
14 damage of DIA and RFS.

15 **FIRST CLAIM FOR RELIEF**

16 **Lanham Act Infringement**

17 42. DIA and RFS repeat and make a part hereof each and every allegation set  
18 forth in paragraphs 1 through 41 of the Verified Complaint.

19 43. Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a), provides in pertinent  
20 part that "[a]ny person who shall, without the consent of the registrant — use in  
21 commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark  
22 in connection with the sale, offering for sale, distribution, or advertising of any goods or  
23 services on or in connection with which such use is likely to cause confusion, or to cause  
24 mistake, or to deceive . . . shall be liable in a civil action by the registrant . . . ."

25 44. The Debtor and Kilburg Hotels have marketed, promoted and rented, and  
26 continue to market, promote and rent rooms at the Facilities through the unauthorized use  
27 of the Marks, and such use has caused and is likely to continue to cause confusion or  
28 mistake among prospective or actual customers, in violation of Section 32 of the Lanham



1 Act.

2 45. The on-going acts of infringement by the Debtor and Kilburg Hotels in  
3 violation of Section 32 of the Lanham Act are malicious, fraudulent, willful, and  
4 deliberate.

5 46. The on-going acts of infringement by the Debtor and Kilburg Hotels, in  
6 violation of Section 32 of the Lanham Act, have inflicted and continue to inflict  
7 irreparable harm on DIA and RFS.

8 47. The on-going acts of infringement by the Debtor and Kilburg Hotels, in  
9 violation of Section 32 of the Lanham Act, constitute "cause" for termination of the  
10 automatic stay pursuant to 11 U.S.C. § 362(d)(1), and DIA and RFS are entitled to  
11 termination of the automatic stay under 11 U.S.C. § 362(d)(1) and (2) to employ to the  
12 extent necessary any applicable non-bankruptcy remedies to enforce the relief granted by  
13 this Court and, otherwise, to prevent further infringement.

14 48. DIA and RFS have no adequate remedy at law.

15 49. No previous injunctive relief has been awarded with respect to this matter in  
16 this case or any other case.

17 **SECOND CLAIM FOR RELIEF**

18 **Lanham Act False Designations**

19 50. DIA and RFS repeat and make a part hereof each and every allegation set  
20 forth in paragraphs 1 through 49 of the Verified Complaint.

21 51. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent  
22 part that "[a]ny person who, on or in connection with any goods or services . . . uses in  
23 commerce any word, term, name, symbol, or device, or any combination thereof, or any  
24 false designation of origin, false or misleading description of fact, or false or misleading  
25 representation of fact, which -- (A) is likely to cause confusion, or to cause mistake, or to  
26 deceive as to affiliation, connection, or association of such person with another person, or  
27 as to the origin, sponsorship, or approval of . . . goods [or] services . . . shall be liable in a  
28 civil action . . . ."

1        52. The acts of the Debtor and Kilburg Hotels in marketing, promoting and  
2 renting rooms at the Facilities, through and with the DIA Marks and RFS Marks,  
3 constitute a false designation of origin, a false and misleading description of fact, and a  
4 false and misleading representation of fact, that have caused and are likely to continue to  
5 cause confusion, or to cause mistake or deception, as to the affiliation of the Facilities  
6 with DIA and RFS, and to cause confusion, or to cause mistake or deception, to the effect  
7 that DIA and RFS are sponsors or approve of the guest lodging services that the Debtor  
8 and Kilburg Hotels provide at the Facilities, all in violation of Section 43(a) of the  
9 Lanham Act.

10        53. The ongoing acts of infringement by the Debtor and Kilburg Hotels in  
11 violation of Section 43(a) of the Lanham Act are malicious, fraudulent, willful, and  
12 deliberate.

13        54. *The ongoing acts of infringement by the Debtor and Kilburg Hotels in*  
14 *violation of Section 43(a) of the Lanham Act have inflicted and continue to inflict*  
15 *irreparable harm on DIA and RFS.*

16        55. The ongoing acts of infringement by the Debtor and Kilburg Hotels in  
17 violation of Section 43(a) of the Lanham Act, constitute "cause" for termination of the  
18 automatic stay pursuant to 11 U.S.C. § 362(d)(1), and DIA and RFS are entitled to  
19 termination of the automatic stay under 11 U.S.C. § 362(d)(1) and (2) to employ to the  
20 extent necessary any applicable non-bankruptcy remedies to enforce the relief granted by  
21 this Court and, otherwise, to prevent further infringement.

22        56. DIA and RFS have no adequate remedy at law.

23        57. No previous injunctive relief has been awarded with respect to this matter in  
24 this case or any other case.

25                    **THIRD CLAIM FOR RELIEF**

26                    **Lanham Act Dilution**

27        58. DIA and RFS repeat and make a part hereof each and every allegation set  
28 forth in paragraphs 1 through 57 of the Verified Complaint.

1       59.     Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), provides in pertinent  
2 part that "[t]he owner of a famous mark shall be entitled, subject to the principles of  
3 equity and upon such terms as the court deems reasonable, to an injunction against  
4 another person's commercial use in commerce of a mark or trade name, if such use begins  
5 after the mark has become famous and causes dilution of the distinctive quality of the  
6 mark, and to obtain such other relief as is provided in this subsection."

7       60.     The use of the Marks by the Debtor and Kilburg Hotels in connection with  
8 offering and providing goods and services at the Facilities, after the Marks became  
9 famous, has caused and will continue to cause dilution and disparagement of the  
10 distinctive quality of the Marks, and has lessened and will continue to lessen the capacity  
11 of the Marks to identify and distinguish the goods and services of DIA and RFS, all in  
12 violation of Section 43(c) of the Lanham Act.

13       61.     The ongoing acts of infringement by the Debtor and Kilburg Hotels in  
14 violation of Section 43(c) of the Lanham Act are malicious, fraudulent, willful, and  
15 deliberate.

16       62.     The ongoing acts of infringement by the Debtor and Kilburg Hotels in  
17 violation of Section 43(c) of the Lanham Act have inflicted and continue to inflict  
18 irreparable harm on DIA and RFS.

19       63.     The ongoing acts of infringement by the Debtor and Kilburg Hotels in  
20 violation of Section 43(c) of the Lanham Act, constitute "cause" for termination of the  
21 automatic stay pursuant to 11 U.S.C. § 362(d)(1), and DIA and RFS are entitled to  
22 termination of the automatic stay under 11 U.S.C. § 362(d)(1) and (2) to employ to the  
23 extent necessary any applicable non-bankruptcy remedies to enforce the relief granted by  
24 this Court and, otherwise, to prevent further infringement.

25       64.     DIA and RFS have no adequate remedy at law.

26       65.     No previous injunctive relief has been awarded with respect to this matter in  
27 this case or any other case.

28

1 **FOURTH CLAIM FOR RELIEF**

2 **Declaratory Judgment**

3 66. DIA and RFS repeat and make a part hereof each and every allegation  
4 contained in Paragraphs 1 through 65 as if fully set forth herein.

5 67. The purported transfers and assignments by the Licensees of their interests  
6 in the License Agreements to the Debtor (as referred to in paragraph 36 herein) were  
7 ineffective and without legal force and effect.

8 68. Neither the Debtor nor the Debtor's bankruptcy estate has any legal or  
9 equitable interest in the License Agreements.

10 **FIFTH CLAIM FOR RELIEF**

11 **Unjust Enrichment**

12 69. DIA and RFS repeat and make a part hereof each and every allegation  
13 contained in Paragraph Nos. 1 through 68 as if fully set forth herein.

14 70. The Debtor and Kilburg Hotels, without payment to DIA and RFS, used and  
15 continue to use, the Marks while operating the Facilities.

16 71. The Debtor and Kilburg Hotels have benefited, and continue to benefit,  
17 from using the Marks while operating the Facilities.

18 72. The bankruptcy estate has benefited and continues to benefit from using the  
19 Marks while operating the facilities from and after the filing of the bankruptcy petition in  
20 this case.

21 73. The failure by the Debtor and Kilburg Hotels to pay for using the Marks  
22 constitutes unjust enrichment and has damaged DIA and RFS.

23 **SIXTH CLAIM FOR RELIEF**

24 **Accounting**

25 74. DIA and RFS repeat and make a part hereof each and every allegation  
26 contained in Paragraphs 1 through 73 as if fully set forth herein.

27 75. Beginning on or about March 29, 1999 and continuing thereafter, the  
28 Debtor and Kilburg Hotels have engaged in acts and practices, as described, which

1 amount to infringement of the Marks in an unlawful, unfair, and fraudulent manner which  
2 is likely to confuse the public, dilute the value of the Marks and cause irreparable injury  
3 to DIA and RFS, all as heretofore alleged in this Verified Adversary Complaint.

4 76. As a result, the Debtor and/or Kilburg owe restitution and the disgorgement  
5 of profits, in amounts unknown to DIA and RFS, and which amounts cannot be  
6 ascertained without an accounting of the receipts and disbursements, profit and loss  
7 statements, and other financial materials, statements and books from the Debtor and/or  
8 Kilburg Hotels as to each of the Facilities.

9 **DEMANDS FOR RELIEF**

10 WHEREFORE, DIA and RFS demand judgment against the Debtor and Kilburg  
11 Hotels as follows:

12 A) Judgment against the Debtor and Kilburg Hotels under the First, Second  
13 and Third Claims for Relief, pursuant to 15 U.S.C. §§ 1114(1), 1125(a), and 1125(c) as  
14 follows:

15 i) Preliminarily and permanently restraining and enjoining the Debtor  
16 and Kilburg Hotels, their respective affiliates, subsidiaries, officers, agents,  
17 servants, employees and attorneys, and all those who act in concert or participation  
18 with said defendants, from marketing, promoting or selling guest lodging services  
19 at the Facilities through and with the Days Inn Marks or Ramada Marks;

20 ii) Preliminarily and permanently enjoining the Debtor and Kilburg  
21 Hotels by directing said defendants to forthwith de-identify the Facilities from the  
22 Days and Ramada Franchise Systems, including (i) the removal of all signs and  
23 other forms of display bearing any Days Inn Marks or Ramada Marks, (ii) the  
24 removal of all personalty, including guest room supplies and equipment, bearing  
25 Days Inn Marks or Ramada Marks, and (iii) the delivery back to DIA and RFS all  
26 of said plaintiffs' proprietary materials including, without limitation, operations  
27 and training manuals, policy statements, computer hardware and licensed software;

28 iii) Preliminarily and permanently restraining and enjoining the Debtor

1 and Kilburg Hotels, their respective affiliates, subsidiaries, officers, agents,  
2 servants, employees and attorneys, from transferring or attempting to transfer, by  
3 assignment, conveyance or any other means, any legal or equitable interest in any  
4 of the Facilities prior to such Facilities properly being de-identified, as above, and  
5 from transferring or attempting to transfer any rights or interests in and to the  
6 Abilene License Agreement, the Albuquerque License Agreement, the Las Cruces  
7 License Agreement and the Round Rock License Agreement, and/or any rights or  
8 interests under the License Agreements;

9 iv) Granting compensatory and punitive damages, attorneys' fees,  
10 prejudgment interest, costs of suit and such other and further relief as this Court  
11 shall deem just and proper; and

12 v) To the extent applicable, terminating the automatic stay imposed  
13 under 11 U.S.C. § 362(a) and any other stays or injunctions imposed in this case to  
14 allow plaintiffs to enforce through any applicable non-bankruptcy means relief  
15 granted pursuant to First, Second and Third Claims for Relief and, otherwise, to  
16 prevent further unauthorized use of the Marks.

17 B) Judgment against the Debtor under the Fourth Claim for Relief declaring  
18 that neither the Debtor nor the Debtor's bankruptcy estate has any legal or equitable  
19 interest in the License Agreements at issue.

20 C) Judgment against the Debtor and Kilburg Hotels under the Fifth Claim for  
21 Relief for damages based upon the unjust enrichment of said defendants, as appropriate  
22 according to proof at trial.

23 D) Allowance of a Chapter 11 administrative claim against this bankruptcy  
24 estate claim under the Fifth Claim for Relief pursuant to 11 U.S.C. § 503(b)(1) and  
25 accorded priority under 11 U.S.C. § 507(a)(1) based upon the portion of the unjust  
26 enrichment accrued since the filing of the bankruptcy petition in this case, as appropriate  
27 according to proof at trial.

28 E) An order granting the relief requested in the Sixth Claim for Relief

1 requiring the Debtor and Kilburg Hotels to account to DIA and RFS for any and all  
2 profits derived as a result of marketing, promoting, or selling guest lodging services at the  
3 Facilities through and with the Days Inn Marks and Ramada Marks; and

4 F) On all Claims for Relief:

5 i) Prejudgment and post-judgment interest, as provided by law and  
6 under the terms of the License Agreements at issue;

7 ii) Attorneys' fees according to proof; and

8 iii) Such other and further relief as the Court may deem just and proper.

9 Dated: December 21, 1999

10 GREINER, GALLAGHER & CAVANAUGH  
11 Timothy R. Greiner  
12 2001 Route 46, Suite 202  
13 Parsippany, New Jersey 07054  
14 Phone: 973-335-7400  
15 Fax: 973-335-8018

16 FENNEMORE CRAIG, P.C.

17 By Bryan Al. Albue  
18 Bryan Al. Albue  
19 3003 North Central Avenue, Suite 2600  
20 Phoenix, Arizona 85012-2913  
21 Phone: 602-916-5000  
22 Fax: 602-916-5999

23 Attorneys for Plaintiffs  
24  
25  
26  
27  
28

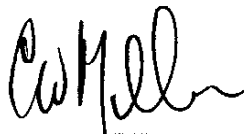
**VERIFICATION**

STATE OF NEW JERSEY    )  
  )ss.:  
COUNTY OF MORRIS        )

C. WAYNE MILLER, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am Vice President, Franchise Administration, of both Days Inns of America, Inc. ("DIA") and Ramada Franchise Systems, Inc. ("RFS"), which are the plaintiffs in this action.

2. I have read the foregoing Verified Adversary Complaint and all the allegations contained therein. Except as to allegations alleged upon information and belief, which allegations I believe to be true, all the allegations in the Verified Adversary Complaint are true based on my personal knowledge, the records of DIA and RFS, or information available through employees of DIA and RFS.



\_\_\_\_\_  
C. WAYNE MILLER

Subscribed and sworn to  
before me this 10  
day of Dec., 1999

  
Notary Public

SUE ANN B. GROSSMAN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 21, 2002